

# **General Terms and Conditions**

## **For**

### **IMLS Discretionary Awards**

The General Terms and Conditions for IMLS Discretionary Awards are based on the administrative requirements of the Office of Management and Budget Circular A-110, which apply to institutions of higher education, hospitals and other nonprofit organizations, and 45 CFR § 1183, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and apply to the majority of IMLS discretionary awards. Organizations that receive grants that are subject to these general terms and conditions must be familiar with this document and comply with its requirements.

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## **Glossary of Terms**

**Authorizing Official** – The authorizing official of the applicant institution has the authority to apply for federal support of the institution's activities and to enter into legal agreements in the name of the institution.

**Cash Contributions** - The grantee's cash outlay for budgeted project activities, including the outlay of money contributed to the grantee by third parties.

**Cost Sharing** - The portion of the costs of a project not charged to IMLS funds. This would include cash contributions (as defined above) as well as the value of grantee contributions of services and property that are valued in accordance with the applicable cost principles and the value of third-party in-kind contributions.

**Debarment** - The ineligibility of a grantee to receive any assistance or benefits from the federal government, either indefinitely or for a specified period of time, based on legal proceedings taken pursuant to agency regulations implementing Executive Order 12549.

**Equipment** - Tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost which equals or exceeds per unit the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5,000.

**Grant** - A legal instrument that provides financial assistance in the form of money or property to an eligible recipient. The term includes cooperative agreements but it does not apply to technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. The term does not include fellowships or other lump sum awards, for which the recipient is not required to provide a financial accounting.

**Grant Period** - The period established in the grant award during which IMLS sponsored activities and project expenditures are to occur

**Grantee** - The organization to which a grant is awarded and which is accountable for the use of the funds provided.

**Indian Tribe** - The term means any tribe, band, nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation [as defined in, or established pursuant to, the Alaska native Claims Settlement Act (43 U.S.C. 1601 et. seq.)], which is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**In-Kind Contributions** - The value of non-cash contributions provided by third parties. In-kind contributions may be in the form of charges for real property and equipment or

the value of goods and services directly benefiting and specifically identifiable to the project.

**Intangible Property** - Includes, but is not limited to, trademarks; copyrights; patents and patent applications.

**Local Government** - A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of government, any other regional or interstate government entity, or any agency or instrumentality of a local government.

**Obligation** - The amounts of orders placed, contracts and grants awarded, goods and services received, and similar transactions during the grant period that will require payment.

**Program Officer** - The IMLS program staff member designated in the cover letter to the official grant award notice as the IMLS staff member who is responsible for the oversight of the programmatic aspects of the grant.

**Program Income** - Money that is earned or received by a grantee or a subrecipient from the activities supported by grant funds or from products resulting from grant activities. It includes, but is not limited to, income from fees for services performed and from the sale of items fabricated under a grant; usage or rental fees for equipment or property acquired under a grant; admission fees; broadcast or distribution rights; and royalties on patents and copyrights.

**Project Funds** - Both the federal and non-federal funds that are used to cover the cost of budgeted project activities.

**Simplified Acquisition Threshold** - This term replaces "small purchase threshold," and the threshold is currently set at \$100,000 [41 U.S.C. 403 (11)]. (See "Contract Provisions" in the Appendix to these terms and conditions.)

**State** – Each of the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or any agency or instrumentality of a state exclusive of local governments, institutions of higher education, and hospitals.

**Subgrant** - An award of financial assistance in the form of money or property, made under a grant by a grantee to an eligible subrecipient or by a subrecipient to a lower-tier subrecipient. The term does not include the procurement of goods and services.

**Supplies** - All personal property excluding equipment and intangible property, as defined in this glossary.

Suspension – This term applies to an action on the part of a federal funding agency that either affects a grant agreement or the eligibility of an individual or organization to apply for funding from the Federal Government.

1. The suspension of a **grant** is the temporary withdrawal of federal sponsorship. This includes the withdrawal of authority to incur expenditures against grant funds, pending corrective action or a decision to terminate the grant.
2. The suspension of an **individual or organization** causes that party to be temporarily ineligible to receive any assistance and benefits from the federal government pending completion of investigation and legal proceedings as prescribed under agency regulations implementing Executive Order 12549. Such actions may lead to debarment of the grantee.

Termination - Cancellation of federal sponsorship of a project, including the withdrawal of authority to incur expenditures against previously awarded grant funds before that authority would otherwise expire.

## **1. Applicability of General Terms and Conditions**

The General Terms and Conditions for IMLS Discretionary Awards apply to grants that the Office of Museum Services and Office of Library Services issue to private nonprofit organizations; institutions of higher education; and state, local, and federally recognized Indian tribal governments. The State Library Program has its own set of award terms and conditions.

## **2. Grantee Responsibilities**

The grantee has full responsibility for the conduct of project activities under an IMLS award, for adherence to the award conditions, and for informing the appropriate IMLS program office and the Grants Administration Office during the course of the grant of any significant programmatic, administrative, or financial problems that have arisen.

The requirements that apply to a grant award are contained in these *General Terms and Conditions for IMLS Discretionary Awards*, the special conditions that may be included in the grant award, and the applicable federal uniform administrative requirements (see Article 3). Should there be any inconsistency between the special conditions of an award and the General Terms and Conditions or the federal uniform administrative requirements, the special conditions will govern.

In accepting a grant, the grantee assumes the legal responsibility of administering the grant in accordance with these requirements and of maintaining documentation, which is subject to audit, of all actions/expenditures affecting the grant. Failure to comply with the requirements of this award could result in suspension or termination of the grant and IMLS recovery of grant funds.

## **3. Uniform Administrative Requirements**

Grants issued to state, local, and federally recognized Indian tribal governments are subject to 45 CFR § 1183, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Grants to institutions of higher education, hospitals, and other nonprofit organizations are subject to the uniform administrative requirements of OMB Circular A-110. The standards set forth herein and in the instructions for the submission of financial reports and performance reports are consistent with these administrative requirements.

## **4. Allowable Costs**

The allowability of costs and cost allocation methods for work performed under an IMLS grant shall be determined in accordance with the applicable federal cost principles and the terms and conditions of the grant award

The following circulars set forth the federal cost principles that apply to the various types of IMLS grantees:

- a. OMB Circular A-21--public and private institutions of higher education;
- b. OMB Circular A-122--nonprofit organizations that are not institutions of higher education;
- c. OMB Circular A-87--state, local, and federally recognized Indian tribal governments

Copies of the cost principles may be obtained from the IMLS website ([http://www.imls.gov/grants/current/crnt\\_legref.htm](http://www.imls.gov/grants/current/crnt_legref.htm)) or by writing to the IMLS Office of Grants Administration.

## **5. Grant Period and Extensions**

The grant period is the span of time designated in the grant award, or an amendment thereto, during which the grantee has the authority to obligate grant funds and undertake project activities. If a grantee determines toward the end of a grant period that additional time is required to complete the original scope of the project with the funds already made available, the authorizing official of the grantee institution may submit a request to the appropriate IMLS program to extend the grant for up to a year. Extension requests shall be made prior to the original grant ending date and shall explain in detail the reason for the request. IMLS will normally not extend a grant more than once.

## **6. Changes in Project Scope**

Any project that is carried out under a grant must be consistent with the scope of the proposal that is approved for funding by IMLS. The scope of a project encompasses the purpose for which the grant is undertaken, the subject matter, the treatment of the subject matter, the historical time frame of the project, the volume of material that will be studied/treated, and the products that are expected to result from grant activities. No changes may be made in the scope of a project without written approval from IMLS.

All requests for a change in the scope of a grant shall be signed by the authorizing official and submitted to the appropriate IMLS program officer.

## **7. Changes in Key Project Personnel**

The replacement of the project director or the co-director or a substantial reduction in the level of their effort, e.g., their unanticipated absence for more than three months, or a 25 percent reduction in the time devoted to the project, requires prior written approval from IMLS. When it is specifically required as a condition of a grant, written approval will also be needed for the replacement or the substantial reduction in the level of effort of other personnel whose work is deemed by IMLS to be critical to the project's successful completion.

All requests for approval of changes in key project personnel shall be signed by the authorizing official and submitted to the appropriate IMLS program officer. Evidence of the qualifications for replacement personnel (such as a résumé) shall be included.

## **8. Budget Revisions**

The project budget is the schedule of anticipated project expenditures that is approved by IMLS for carrying out the purposes of the grant. When grantees or third parties support a portion of the project costs, the project budget includes the nonfederal as well as the federal share of project expenses.

The grantee shall obtain prior written approval from the IMLS program officer whenever a budget revision is necessary because of

- a. a change in the scope or objectives of the project (see Article 6)
- b. the transfer to a third party (by contracting, or other means) of any work under a grant;<sup>1</sup>
- c. the addition of costs that are specifically disallowed by the terms and conditions of the grant award or for which the applicable cost principles require prior approval, e.g. the purchase of equipment, participant support costs, publication and printing costs, foreign travel;
- d. the transfer of funds among direct costs categories, or, if applicable, among separately budgeted programs, projects, functions or activities, when the federal share of project costs exceeds \$100,000 and the cumulative amount transferred exceeds 10 percent of the current approved budget: or
- e. the transfer of funds from stipends or training allowances to other budget categories.

All requests for budget revisions shall be signed by the authorizing official and submitted to the IMLS program officer.

Within 30 calendar days from the date of receipt of the request for budget revision, IMLS will review the request and notify the grantee whether or not the budget revision has been approved. If the budget revision is still under consideration at the end of 30 calendar days, IMLS will inform the grantee in writing of the date by which the grantee may expect a decision.

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<sup>1</sup> IMLS approval is not required for third-party transfers that were described in the approved project plan, or for the purchase of supplies, materials, or general support services



## 9. Cost Sharing and Cost-Sharing Records

Grantees are required to share in project expenses at the level indicated in the approved project budget. They must also maintain auditable records of all project costs whether they are charged to grant funds or supported by cost-sharing contributions.

All cash and in-kind contributions to a project that are provided by the grantee or by a third party are acceptable as the grantee's cost sharing when such contributions are

- verifiable from the grantee's records;
- not included as contributions for any other federally-assisted program;
- necessary and reasonable for the proper and efficient accomplishment of project objectives;
- types of charges that would be allowable under the applicable cost principles;
- used to support activities that are included in the approved project work plan; and
- incurred during the grant period.

Contributions, such as property, space, or services that are provided to a project by the grantee are to be valued in accordance with the applicable federal cost principles and **not** on the basis of what would normally be charged for the use of these items or services.

When the grantee's cost sharing includes third-party in-kind contributions, the basis for determining the valuation of volunteer services and donated property or space must be documented and must conform to the principles set out below:

- a. Volunteer services shall be valued at rates consistent with those ordinarily paid for similar work within the grantee organization. If the grantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount of fringe benefits may be included in the valuation.
- b. When an employer furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that is reasonable), provided these services involve the same skills for which the employee is normally paid.
- c. The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation, and the value of loaned equipment shall not exceed its fair rental value.
- d. The value of donated space shall not exceed the fair rental value of comparable space, as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.
- e. The value assigned to donated supplies or other expendable property should be reasonable and should not exceed the fair market value of the property at the time of donation.

## 10. Payments and Interest

Grantee organizations shall use Standard Form 270 to request payment. To expedite payment, IMLS recommends that grantees fax this form to the Office of Grants Administration at **202-653-4604**. The mailing address is:

Office of Grants Administration  
Institute of Museum and Library Services  
1800 M Street, NW / 9<sup>th</sup> Floor  
Washington, DC 20036-5802

Unless it is stated otherwise in the special terms and conditions of an award notification, grantees will be authorized to be paid on an advance basis and payment will be effected through electronic funds transfer provided that the following conditions exist:

1. Funds for the project period have been obligated in the form of a signed Award Notification;
2. The grantee maintains or demonstrates the willingness to maintain written procedures that will minimize the time elapsing between the transfer of funds from the U.S. Treasury and their disbursement by the grantee; and
3. The grantee's financial management system meets the standards for fund control and accountability prescribed in Section 21 of OMB Circular A-110 or 45 CFR Part 1183.20.

Whenever possible, advances should be consolidated to cover the anticipated cash needs for all IMLS awards to the grantee and should be deposited and maintained in insured accounts. Grant funds that have been paid to the grantee but are unspent at the end of the grant period must be returned to the IMLS Office of Grants Administration.

Grantees are also encouraged to use women-owned and minority-owned banks (banks that are owned at least 50 percent by women or minority group members).

Frequency of Requests. Grantees may submit payment request whenever grant funds are needed. Requests for advance payment should be submitted no earlier than fifteen working days prior to the beginning of the period for which the funds are requested. Grantees that fax payment request to IMLS can expect payment via electronic transfer within five workdays.

Limitations on Advance Payments. Grantees may request advance payments of up to \$25,000 to cover anticipated expenditures of IMLS grant funds for a 90-day period. When the request for advance payment exceeds \$25,000, the request must be limited to what the grantee plans to expend in grant funds in the next 30-day period. To avoid possible delays in processing a payment request, grantees should explain unusually high payment requests when they are submitted to IMLS.

Interest on Advances. All grantees, except states (see definition in Glossary of Terms), are required to maintain advances of federal funds in interest-bearing accounts unless the grantee receives less than \$120,000 per year in advances of grant funds or the most reasonably available interest-bearing account would not earn more than \$250 per year on the federal cash balance, or would entail bank services charges in excess of the interest earned.

Interest in excess of \$250 a year that is earned on advanced payments shall be remitted annually to the Department of Health and Human Services. If possible, interest should be remitted through an electronic medium such as the Remittance Express (REX) Deposit system. Grantees that do not have this capability should make payment by check, identify it as interest earned on advances of IMLS funds, and mail it to the HHS Payment Management System, P.O. Box 6021, Rockville, MD 20852.

## **11. Reporting Requirements**

A final performance report and a final Financial Status Report (SF 269A) shall be submitted to the IMLS Office of Grants Administration within 90 days after the completion date of the grant period. A schedule of due dates for interim and final reports will be found on the last page of the grant award.

In addition, grantees that are paid in advance are required to report the status of funds received from IMLS through the submission of a Federal Cash Transactions Report (SF 272). This report is used to monitor the receipt and disbursement of federal grant funds only; nonfederal funds and cost sharing should not be included on this form. The Federal Cash Transactions Report must be submitted within thirty days after the end of each calendar quarter.

Failure to submit reports on a timely basis may result in delayed payments and the suspension of action on pending applications from the grantee organization.

Because IMLS is still experiencing delays in receiving materials sent through the regular mail, grantees are encouraged to fax financial reports to the Grants Administration Office (202-653-4604). Performance reports of 20 pages or less may be faxed or e-mailed to IMLS at [imlsreporting@imls.gov](mailto:imlsreporting@imls.gov). Performance reports of more than 20 pages should be sent through the U.S. Postal Service or another delivery service to

Office of Grants Administration  
Institute of Museum and Library Services  
1800 M Street, NW / 9<sup>th</sup> Floor  
Washington, DC 20036-5802

It should be noted that when a signed financial report is faxed to IMLS, the grantee is required to retain the original report in accordance with the standards set forth in Article

14 (Record Retention) of these General Terms and Conditions for IMLS Discretionary Awards.

## **12. Financial Management Standards**

The financial management systems of grantee organizations and their subrecipients must meet the following standards:

Accounting System. Grantee organizations and their subrecipients must have an accounting system that provides accurate, current, and complete disclosure of all financial transactions related to each federally sponsored project. Accounting records must contain information pertaining to federal awards, authorizations, obligations, unobligated balances, assets, outlays, and income. These records must be maintained on a current basis and balanced at least quarterly.

Cash contributions to the project from third parties must be accounted for in the general ledger with other grant funds. Third party in-kind (non-cash) contributions are not required to be recorded in the general ledger, but must be under accounting control, possibly through the use of a memorandum ledger.

Source Documentation. Accounting records must be supported by such source documentation as canceled checks, bank statements, invoices, paid bills, donor letters, time and attendance records, activity reports, travel reports, contractual and consultant agreements, and subaward documentation. All supporting documentation should be clearly identified with the grant and general ledger accounts which are to be charged or credited.

The documentation required for salary charges to grants is prescribed by the cost principles applicable to the grantee organization (see Article 5).

For grantees subject to OMB Circular A-21 (educational institutions), documentation for salary charges shall be based on either a system of monitored workload or a system of personnel activity reports for professional or professorial staff. Nonprofessional employees must keep personnel activity reports.

For grantees subject to OMB Circular A-122 (nonprofit organizations), documentation for all salary charges shall be based on a system of personnel activity reports.

For grantees subject to OMB Circular A-87 (state and local governments), documentation for salary charges shall be based on a system of personnel activity reports unless an employee is working solely on a single federal award. In this case, the charge for salary will be supported by a certification signed by the employee or the supervisor.

Personnel activity reports shall account on an after-the-fact basis for one hundred percent of the employee's actual time, separately indicating the time spent on the IMLS grant, other grants or projects, vacation or sick leave, and administrative time, if applicable. The

reports must be signed by the employee, approved by the appropriate official, and coincide with a pay period. These time records should be used to record the distribution of salary costs to the appropriate accounts no less frequently than quarterly.

Formal agreements with independent contractors, such as consultants, must include a description of the services to be performed, the period of performance, the fee and method of payment, an itemization of travel and other costs which are chargeable to the agreement, and the signatures of both the contractor and an appropriate official of the grantee organization.

If third party in-kind (non-cash) contributions are used on a project, the valuation of these contributions must be supported with adequate documentation (see Article 9).

Internal Control. Effective control and accountability must be maintained for all cash, real and personal property, and other assets. Grantees must adequately safeguard all such property and must provide assurance that it is used solely for authorized purposes. Grantees must also have systems in place that ensure compliance with the terms and conditions of each grant award.

Budget Control. Records of expenditures must be maintained for each grant project by the cost categories of the approved budget (including indirect costs that are charged to the project), and actual expenditures are to be compared with budgeted amounts no less frequently than quarterly. IMLS approval is required for certain budget revisions (see Article 8)

Allowable Costs. The applicable OMB cost principles, the *General Terms and Conditions for IMLS Discretionary Awards*, and any special conditions of the grant award shall govern the determination of the reasonableness, allowability, and allocability of project costs.

Cash Management. Grantees must also have written procedures to minimize the time elapsing between the receipt and the disbursement of grant funds to avoid having excessive federal funds on hand. Requests for advance payment shall follow the guidelines set forth in Article 10.

Grantees must insure that all grant funds are obligated during the grant period and paid no later than 90 days after the end of the grant period.

### **13. Audit Requirements**

A grantee or a subrecipient must obtain an audit, as required by the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), and comply with the requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," if it expends in the aggregate of \$500,000 or more in federal funds on financial assistance awards or cost-reimbursement contracts in any fiscal year ending after December 31,

2003<sup>2</sup>. (Copies of A-133 may be obtained from the IMLS website ([http://www.imls.gov/grants/current/crnt\\_legref.htm](http://www.imls.gov/grants/current/crnt_legref.htm)) or by contacting the IMLS Office of Grants Administration.)

#### **14. Record Retention**

Financial records, supporting documentation, statistical records, and all other records pertinent to the grant shall be retained by the grantee for three years from the date of submission of the final Financial Status Report. When the conditions of a grant award require the grantee to report program income, records relating to program income shall be retained for three years from the date of submission of the last required income report.

If the three-year retention period is extended because of audits, appeals, litigation, or the settlement of claims arising out of the performance of the project, the records shall be retained until such audits, appeals, litigation, or claims are resolved. Unless court action or audit proceedings have been initiated, the grantee may substitute microfilm copies of original records.

IMLS, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the grantee and its subrecipients to make audits, examinations, excerpts, transcripts, and copies. Further, any contract in excess of the simplified acquisition threshold (currently \$100,000) that is negotiated by the grantee for the purposes of carrying out the grant project shall include a provision to the effect that the grantee, IMLS, the Comptroller General, or any of their duly authorized representatives shall have access for similar purposes to any records of the contractor that are directly pertinent to the project.

#### **15. Equipment**

For the purpose of this Article, equipment is defined as tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. The purchase of equipment not included in the approved project budget is allowable only if it is specifically approved by IMLS and there is documentation to support that the purchase is necessary and reasonable to carry out project activities.

Equipment records must be maintained that include the description of the equipment, the serial number or other identification number, the source of equipment, the title holder, the acquisition date, the cost of the equipment, the location, use, and condition of the equipment, and any ultimate disposition data including the date of disposal and the sale price of the equipment. A physical inventory of the equipment must be taken and the results reconciled with the equipment records at least once every two years.

#### **16. Title to Equipment**

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<sup>2</sup> For fiscal years ending before December 31, 2003, the requirements of OMB Circular A-133 applied whenever the grantee expended \$300,000 or more in federal funds within a fiscal year.

Title to equipment purchased or fabricated with IMLS funds shall be vested in the grantee organization with the understanding that the equipment will be used for the project for which it was obtained. IMLS may reserve the right to request the transfer of title to the federal government or to a third party when the current per unit fair market value of the equipment is \$5,000 or more and the equipment is no longer needed to carry out the purposes of the project or other projects funded by government agencies.

## **17. Supplies**

Title to supplies and other expendable property shall vest in the grantee upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project and the supplies are not needed for any other federally-sponsored project or program, the grantee shall retain the supplies for use on non-federal sponsored activities or sell them, but shall in either case compensate the federal government for its share.

## **18. Travel Costs**

Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by those who are on official business attributable to work under a grant.

Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the grantee in its regular operation, as set forth in its written travel policy.

Airfare costs in excess of the lowest available commercial discount or customary standard (coach) airfare are unallowable unless such accommodations are not reasonably available to accomplish the purpose of travel.

## **19. Foreign Travel**

For the purposes of these provisions, foreign travel is defined as any travel outside the United States, its territories and possessions, and Canada. Each separate foreign trip must be itemized in the budget approved by IMLS. Foreign travel that is not included in the approved project budget must be specifically approved in writing by the appropriate IMLS program officer.

**All air transportation of persons or property that is paid in whole or in part with IMLS funds must be performed on a U.S. flag air carrier or under a code sharing arrangement with a U.S. flag carrier.** The airline tickets (or the documentation for electronic tickets) must identify the U.S. flag air carrier's designator code and flight number.

(See Item 3 in the Appendix for an explanation of when the use of a foreign-flag air carrier would be justified.)

## **20. Dissemination of Project Results**

Grantees are expected to publish or otherwise make publicly available the results of work conducted under a grant. Unless otherwise specified in the award documents, Three copies of any published material resulting from grant activities should be forwarded to the appropriate IMLS program officer as soon as it becomes available. This material should be labeled with the identifying IMLS grant number.

All publication and distribution agreements shall include provisions giving the government a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the material for Federal purposes and requiring the acknowledgment of IMLS support. The publication shall also include the disclaimer contained in Article 21 of these General Grant Provisions for Organizations.

## **21. Acknowledgment of Support and Disclaimer**

Unless advised to the contrary, all materials publicizing or resulting from grant activities shall contain an acknowledgment of IMLS support. The acknowledgment shall also include the following statement: "Any views, findings, conclusions or recommendations expressed in this (publication) (program) (exhibition) (website) do not necessarily represent those of the Institute of Museum and Library Services."

## **22. Intangible Property**

a. The grantee may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under the grant. IMLS reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use these materials for Federal purposes and to authorize others to do so (see §\_\_36. Intangible Property, OMB Circular A-110 and 45 CFR § 1183.34 Copyrights).

b. Grantees that are awarded funds for experimental, developmental, or research work are subject to the regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

c. In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a grant that were used by the Federal Government in developing an agency action that has the force and effect of law, IMLS shall request, and the grantee shall provide, within a reasonable time, the research



data so that they can be made available to the public through the procedures established under the FOIA.

### **23. Data Collection**

Data collection activities performed under a grant are the responsibility of the grantee, and IMLS support of the project does not constitute approval of the survey design, questionnaire content, or data collection procedures. The grantee shall not represent to respondents that such data are being collected for, or in association with, IMLS or any other government agency without the specific written approval of the data collection plan or device by IMLS. However, this requirement is not intended to preclude mention of IMLS support of the project in response to an inquiry or acknowledgment of such support in any publication of this data.

IMLS has the right to (1) obtain, reproduce, publish or otherwise use the data first produced under a grant; and (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

### **24. Program Income**

Program income is money that is earned or received by a grantee or a subrecipient from the activities supported by grant funds or from products resulting from grant activities. It includes, but is not limited to, income from fees for services performed and from the sale of items fabricated under a grant; usage or rental fees for equipment or property acquired under a grant; admission fees; broadcast or distribution rights; and license fees and royalties on patents and copyrights. The federal share of program income is determined by the percentage of total project costs that are supported by IMLS

#### **a. Income Earned During the Grant Period**

The federal share of program income earned during the grant period shall be retained by the grantee and, unless the grant award specifies how such income will be used, the grantee must use it in one or more of the following ways:

- (1) It may be added to the existing project funds and used to further eligible project objectives;
- (2) It may be used to meet the grantee's cost-sharing requirement; or
- (3) It may be deducted from the total allowable costs to determine the net allowable project costs that may be charged to the IMLS grant.

A report of program income earned during the grant period must be submitted with the final Financial Status Report whenever program income is actually earned during the grant period or when the special conditions of the grant award specifically require such a report. The report shall indicate the total amount of program income that was earned and how it was used. As long as the costs that are incidental to the generation of program income are not charged to the grant or included in the grantee's cost sharing, they may be

deducted from gross program income to determine the amount of program income that is subject to the requirements of this Article.

**b. Income Earned After the Grant Period**

Unless otherwise stated in the grant award, the grantee shall have no obligation to the federal government regarding program income earned after the end of the grant period.

**25. Nondiscrimination**

IMLS grants and cooperative agreements are subject to the provisions of:

- (a) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000 et seq.), which prohibits discrimination on the basis of race, color, or national origin;
- (b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 701 et seq.), which prohibits discrimination on the basis of disability;
- (c) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-83, 1685-86), which prohibits discrimination on the basis of sex in education programs; and
- (d) the Age Discrimination in Employment Act of 1975, as amended (42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age.

**26. Debarment and Suspension**

At the time of application, the authorizing official will certify, on behalf of the applicant, that to the best of his or her knowledge and belief that the applicant and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, or in connection with a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

**27. Drug-Free Workplace Requirements**

When an application is submitted to IMLS, the authorizing official of the applicant institution shall certify that the applicant will or will continue to provide a drug-free workplace by:

- (a) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the action that will be taken against employees for violation of such prohibition;

- (b) establishing an ongoing drug-free awareness program to inform employees about:
    - (1) the dangers of drug abuse in the workplace;
    - (2) the grantee's policy of maintaining a drug-free workplace;
    - (3) any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) the penalties that may be imposed on employees for drug abuse violations occurring in the workplace;
  - (c) making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
  - (d) notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
    - (1) abide by the terms of the statement; and
    - (2) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace not later than five calendar days after such conviction;
  - (e) notifying the agency in writing within ten (10) calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notices shall include the identification number(s) of each affected grant;
  - (f) taking one of the following actions within thirty (30) days of receiving notice under subparagraph (d)(2) with respect to any employee who is so convicted:
    - (1) taking appropriate personnel action against such an employee, up to and including termination consistent with the requirements of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 701 et seq.); or
    - (2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law or other appropriate agency; and
  - (g) making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
- (B) The applicant shall either identify the site(s) for the performance of work done in connection with the project in the application material or shall keep this information on file in its office so that it is available for federal inspection. The street address, city, county, state, and zip code should be provided whenever possible.

## 28. Lobbying Activities

When applying for more than \$100,000 in federal funding, the authorizing official must certify, to the best of his or her knowledge and belief that:

- (a) no federal appropriated funds have been paid or will be paid, by or on behalf of the authorizing official, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a federal contract, the making of a federal grant, the making of a federal loan, the entering into of a cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative agreement.
- (b) if any funds other than appropriated federal funds have been paid or will be paid to any person (other than a regularly employed officer or employee of the applicant) for influencing

or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the authorizing official shall request, complete, and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(c) the authorizing official shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts; and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

IMLS is required by the provisions of its appropriations act to include the text of 18 U.S.C. 1913 in all of its grant and contract documents.

Text of 18 U.S.C. 1913:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designated to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

## **29. Indebtedness to the Federal Government**

The authorizing official, on behalf of the applicant, certifies to the best of his or her knowledge and belief that the applicant is not delinquent in the repayment of any federal debt.

## **30. Research Misconduct**

Research misconduct is defined as the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. The grantee institution bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with its own institution.

If an allegation of research misconduct is first made to the grantee institution, the grantee institution will notify IMLS Grants Administration Office if the allegation meets the definition of research misconduct given above and the grantee institution's inquiry into the allegation determines there is sufficient evidence to proceed to an investigation. At any time during an inquiry or investigation, the grantee will immediately notify the Institute if

- IMLS resources or interests are threatened,

- public health or safety is at risk;
- research activities should be suspended;
- there is a reasonable indication of possible violations of civil or criminal law;
- Federal action is required to protect the interests of those involved in the investigation;
- the grantee believes the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved; or
- the research community or public should be informed.

IMLS will make a finding of misconduct or take action on such a finding only after careful inquiry and investigation by a grantee institution, by another Federal agency, or by IMLS. In the event of a finding of research misconduct, IMLS will determine what administrative actions are appropriate.

The *IMLS Research Misconduct Policy* is available upon request from the IMLS program staff or the Grants Administration Office and is also available on the IMLS website. Possible misconduct in activities funded by IMLS should be reported to the IMLS Grants Administration Office.

### **31 Termination**

Grants may be terminated in whole or in part

- a. by IMLS, if a grantee materially fails to comply with the terms and conditions of an award;
- d. by the IMLS with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion of the project to be terminated; or
- e. by the grantee upon sending to IMLS written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion of the project to be terminated. However, if IMLS determines that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety either unilaterally or with the consent of the grantee.

When IMLS determines that a grantee has failed to comply with the terms of the grant award, IMLS may suspend or terminate the grant for cause. Normally, this action will be taken only after the grantee has been notified of the deficiency and given sufficient time to correct it, but this does not preclude immediate suspension or termination when such action is required to protect the interests of the government.

In the event that a grant is suspended and corrective action is not taken within 90 days of the effective date, IMLS may issue a notice of termination. No costs that are incurred

during the suspension period or after the effective date of termination will be allowable except those that are specifically authorized by the suspension or termination notice or those that, in the opinion of IMLS, could not have been reasonably avoided.

Within 30 days of the termination date, the grantee shall furnish to IMLS a summary of progress achieved under the grant, an itemized accounting of charges incurred against grant funds and cost sharing prior to the effective date of the suspension or termination, and a separate accounting and justification for any costs that may have been incurred after this date.

### **32. Termination Review Procedures**

A grantee who has received a notice of termination may request IMLS review of the termination action. The request must be postmarked no later than 30 days after the date of the termination notice and should be addressed to the Director, Institute of Museum and Library Services, 1800 M Street, NW., 9<sup>th</sup> Floor, Washington, D.C. 20036-5802.

The request for review must contain a full statement of the grantee's position and the pertinent facts and reasons that support such a position. The Director will promptly acknowledge the request for review and appoint a review committee of at least three staff members. Pending the resolution of the review, the notice of termination will remain in effect.

None of the review committee members may be from the IMLS program or administrative staff that recommended termination or was responsible for monitoring the programmatic or administrative aspects of the grant. The committee will have full access to all relevant IMLS background materials. The committee may also request the submission of additional information from the grantee or IMLS staff and, at its discretion, may meet with representatives of both groups to discuss the pertinent issues. All review activities will be fully documented by the committee. Based on its review, the committee will present its written recommendation to the Director, who will advise the parties concerned of the final decision.

### **33. Resolution of Conflicting Conditions**

Should there be any inconsistency between these general terms and conditions and the special terms of the grant or cooperative agreement, the latter shall govern.

## Appendix

### 1. Procurement Standards

NOTE: The standards contained in this section do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to IMLS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a grant or other agreement. Matters concerning the violation of a statute are to be referred to such federal, state, or local authority as may have proper jurisdiction.

When procuring property or services under a grant, the grantee's procurement policies must adhere to the standards set forth below. Subrecipients of grant funds are subject to the same policies and procedures as the grantee.

a. The grantee will maintain a system for contract administration that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Grantees shall evaluate contractor performance and document, as appropriate, whether or not contractors have met the terms, conditions, and specifications of the contract.

b. A written standard of conduct for awarding and administering contracts shall be maintained by the grantee. No employee, officer, or agent of the grantee shall participate in the selection, or in the awarding or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for a contract: the employee, officer, or agent; any member of his or her immediate family; his or her partner; or an organization which employs or is about to employ any of the preceding.

The officers, employees, and agents of the grantee will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, the grantee may set standards governing when the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the grantee.

c. All procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to insure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals should be excluded from competing for such procurements.

Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the grantee, price, quality, and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for the bid/offer to be evaluated by the grantee. When it is in the grantee's interest to do so, any bid/offer may be rejected.

d. All grantees shall establish written procurement procedures that meet the requirements set forth in the Appendix to these general grant provisions.

The following section also contains the provisions that **must be included in procurement contracts** when applicable.

## **2. Contract Provisions**

a. Grantee contracts in excess of the simplified acquisition threshold (currently \$100,000) must provide for:

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and such remedial actions as may be appropriate.

(2) Termination for cause and for convenience by the grantee, including the manner by which it will be effected and the basis for settlement. In addition, these contracts shall also contain a description of the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) Access by the grantee, IMLS, the Comptroller General of the United States, or any other duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

b. All contracts, including small purchases, shall contain the following provisions as applicable:

### **(1) Equal Employment Opportunity**

All contracts awarded by grantees and their contractors and subrecipients having a value of more than \$10,000 must contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60).

### **(2) Rights to Inventions and Materials Generated Under a Contract or Agreement**

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Government and the recipient in any resulting



invention in accordance with 37 CFR Part 401 and any implementing regulations issued by the awarding agency.

(3) Clean Air Act of 1970 (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as Amended

Contracts of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal sponsoring agency and the Regional Office of the Environmental Protection Agency (EPA).

(4) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors who apply or bid for an award of \$100,000 or more must file a certification with the grantee stating that they will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, cooperative agreement, loan, or any other award covered by 31 U.S.C. 1352. Such contractors must also disclose to the grantee any lobbying that takes place in connection with obtaining any Federal award.

(5) Debarment and Suspension (E.O. 12549 and 12689)

No contracts shall be made to parties listed on the General Services Administration's Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689. These lists contain the names of contractors debarred, suspended, or proposed for debarment by agencies, and contractors declared ineligible under other statutory or regulatory authority other than Executive Order 12549.

Grantees are required to obtain a certification regarding debarment and suspension from all subrecipients and from all parties with whom they contract for goods or services when (1) the amount of the contract is \$100,000 or more, or (2) when, regardless of the amount of the contract, the contractor will have a critical influence or substantive control over the covered transaction. Such persons would be project directors and providers of federally-required audit services.

### **3. Use of Foreign-Flag Air Carriers**

The fact that comparable service provided by a foreign-flag carrier is less expensive, more convenient, or can be paid for with excess foreign currency is not sufficient justification for using a foreign flag carrier that does not have a code-sharing arrangement with a U.S. flag air carrier.

The following **general rules** apply unless their application would result in the first or last leg of travel from or to the U.S. being performed by a foreign-flag air carrier:

- (a) a U.S.-flag air carrier shall be used to destination or, in the absence of direct or through service, to the farthest interchange point on a usually traveled route.
- (b) if a U.S.-flag air carrier does not serve an origin or interchange point, a foreign-flag air carrier shall be used only to the nearest interchange point on a usually traveled route to connect with a U.S. flag air carrier.
- (c) a U.S.-flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, the foreign-flag air carrier may be used notwithstanding the availability of alternative U.S.-flag air carrier service.

#### Use of Foreign-Flag Air Carriers.

##### 1. Travel To and From the U.S.

Use of a foreign-flag air carrier is permissible if:

- (a) the airport abroad is the traveler's origin or destination airport, and use of U.S.-flag air carrier service would extend the time in a travel status by at least 24 hours more than travel by a foreign-flag air carrier; or
- (b) the airport abroad is an interchange point, and use of U.S.-flag air carrier service would increase the number of aircraft changes the traveler must make outside of the U.S. by 2 or more, would require the traveler to wait four hours or more to make connections at that point, or would extend the time in a travel status by at least six hours more than travel by a foreign-flag air carrier.

##### 2. Travel Between Points Outside the U.S.

Use of a foreign-flag air carrier is permissible if:

- (a) travel by a foreign-flag air carrier would eliminate two or more aircraft changes en route;
- (b) travel by a U.S.-flag air carrier would require a connecting time of four hours or more at an overseas interchange point; or
- (c) the travel is not part of the trip to or from the U.S., and use of a U.S.-flag air carrier would extend the time in a travel status by at least six hours more than travel by a foreign-flag air carrier.

##### 3. Short Distance Travel.

For all short distance travel, regardless of origin and destination, use of a foreign-flag air carrier is permissible if the elapsed travel time on a scheduled flight from origin to destination airport by a foreign-flag air carrier is three hours or less and service by a U.S.-flag air carrier would double the travel time.